

CANCELLATION OF CLAIMS

Please cancel Claims 1-9, 14-19 and 21-22, without prejudice.

REMARKS

Claims 24-53 are pending in the above-identified application. Based on a required election without traverse, claims 1-9, 14-19, and 21 were withdrawn without prejudice and have now been cancelled. Claims 10-13, 20, and 22-23 were previously cancelled. Claims 43-53 have been added. Accordingly, claims 24-53 are at issue.

I. 35 U.S.C. 102 Anticipation Rejection of Claims

Claims 24, 25, 36 and 37 were rejected under 35 U.S.C. § 102 as being allegedly unpatentable over Yang (U.S. Patent No. 6,378,325). The Examiner reasoned that the structure of Yang teaches all of the structural limitations of the presently claimed invention, so merely stating a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from [Yang.]” Office Action at p.4. First, Applicant submits that Independent Claim 24 is structurally distinct from Yang. Among other things, Claim 24 requires that “the selective barrier [be] sufficiently configured . . . to provide passage through the barrier of relatively small food ingredients both into and out of the lower chamber” Although the Examiner didn’t identify any “relatively small food ingredients” in Yang, since the selective barrier was identified by the Examiner as separator 2, Applicant will treat ice cubes 5 as the “relatively small food ingredients.” Figure 1 of Yang shows that no ice cube could pass through the “perforated holes” 20 in separator 2. This is confirmed by the portion of Yang that discloses that the ice cubes must be place in recess 10 before locating the separator 2 in the neck of the

body. Even assuming that the resulting "water melt" is a "relatively small food ingredient" (a point Applicants contest), there is no water melt to pass into the lower chamber even if there is water melt available to pass out. Moreover, as Applicant noted using Yang in a manner such that the water melt passes through the selective barrier would completely frustrate the teachings of Yang as Yang specifically teaches away from combining the contents of recesses 10, 40 with the vegetables or fruit salad 6, stating:

[T]he water melt from the ice cubes 5 under the heat of summer days will be limited to be stored respectively in the recess 10 of the body bowl 1 and the recess 40 of the receiving pan 4 without the possibility of being directly mixed with the vegetable or fruit salad 6 and making the vegetable or fruit salad 6 become putrefactive after being continuously soaked in water, by which the vegetable or fruit salad 6 can be kept fresh in a longer period. (Yang Col. 2, lines 53-60.)

Still further, even if the "water melt" could be considered the "relatively small food ingredient" by the Examiner, this reading is most certainly distinguished by Claim 37 ("the relatively small food ingredients have a viscosity greater than water."). Accordingly, Applicant submits that Claims 24, 25, 36 and 37 should be deemed patentable over Yang. Passage to allowance is respectfully requested.

II. 35 U.S.C. 103 Obviousness Rejection of Claims

Claims 26-29, 31-34 and 38-41 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Yang (U.S. Patent No. 6,378,325) in view of Florian (U.S. Patent No. 3,989,158). Claims 30, 35 and 42 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Yang (U.S. Patent No. 6,378,325) in view of Florian (U.S. Patent No. 3,989,158) in further view of Ferguson (U.S. Patent No. 6,153,237).

Claims 26-29 and 31-34 depend from Independent Claim 24. As such, they are patentable in view of the arguments above that overcome citation of the Yang patent. In

addition, even assuming Yang and Florian could be legally combined, neither Yang nor Florian alone or in combination disclose “selective barrier [having] an upwardly angled extension” (Claim 26) alone let alone in combination with the additional elements provided by claims 27-29 and 31-34. Yang teaches only a selective barrier that is seated within neck 12 by mere virtue of gravity. Again, there is no teaching disclosed by Yang and Florian of an operable container having a barrier with an upwardly angled extension (see Claims 26, 31 and 38), let alone a container having a selective barrier with an upwardly angled extension mated with a seat protrusion with a front surface configured such that the barrier is wedged to the front surface (see Claim 28, 33 and 40). Neither Yang nor Florian teach a selective barrier having both an upwardly angled extension and the extension being further extended by a lateral flange (see Claims 29, 34 and 41).

The patentability of Claims 30, 35 and 42, may be found in the combination, which the prior art is missing at least the elements set forth above. Moreover, there is no teaching, suggestion or motivation to replace the lid of Yang, which is not specifically mentioned as forming a liquid tight seal according to the Examiner. In fact, it is unlikely that Yang would ever have a liquid tight lid given the teaching of Yang not to recombine the water melt from the ice cubes with the food that is being kept cool by the arrangement of Yang. That teaching makes a liquid tight lid unnecessary, at best.

Newly added Claims 43-53 provide additional patentable limitations based on independent claim 38 and independent claim 24 (via dependent claims 25, 26 and 30). In particular, these claims highlight that the construction of the present novel container with a selective barrier that is in frictional contact with the container body, a positively engaged, liquid tight lid that may also be used as the base of the container when inverted provides

desirable features for distribution and consumption of food using the present invention.
Consideration of these new claims is respectfully requested.

III. Conclusion

In view of the above amendments and remarks, Applicants submit that all claims are clearly allowable over the cited prior art, and respectfully requests early and favorable notification to that effect.

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to Account No. 502876.

Dated: June 26, 2007

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